TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 355.

A. A. McCULLOUGH, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED JULY 2, 1894.

(15,617.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 733.

A. A. McCULLOUGH, PLAINTIFF IN ERROR,

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THE COMMONWEALTH OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 2, 1894.

a To the honourable justices of the Supreme Court of the United States:

Your petitioner, A. A. McCullough, respectfully represents unto your honors that he is aggrieved by a final decision of the court of appeals of Virginia, the highest court of the State, entered March 15, 1894, in a case wherein he was petitioner and the Commonwealth of Virginia defendant.

This proceeding arose in the circuit court of Norfolk, and is stated in the fore part of the opinion of the Virginia court of appeals, found on page 18 of this record, and was briefly thus, as shown by the record herewith:

Your petitioner, a tax-payer of Virginia, filed his petition in said lower court, asking to verify certain tax-receivable coupons of the State, which he had tendered in payment of his taxes, as provided in the following sections of the Virginia Code:

"SEC. 406. Tax-collector to receive coupons for identification and verification.—Whenever any tax-payer, or his agent, shall tender to any person whose duty it is to collect or receive taxes, debts, or other demands due the State, any papers or instruments printed, written, or engraved, purporting to be coupons detached from bonds issued under the act entitled 'An act to provide for the funding and payment of the public debt,' approved March thirtieth, eighteen hundred and seventy-one, or from bonds issued under the act entitled 'An act to provide a plan of settlement of the public debt,' approved March twenty-eighth, eighteen hundred and seventy-
b nine, in payment of any such taxes, debts, or demands the person to whom such papers are tendered, shall receive the same and give the party making the tender a receipt, stating that he has received them for the purpose of identification and verification.

"SEC. 407. But shall require payment of taxes in money.—He shall at the same time require such tax-payer to pay his taxes in gold or silver coin, United States Treasury notes or national bank notes, and upon payment, give him a receipt for the same. In case of refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected.

"SEC. 408. Shall deliver to judge; proceedings to try genuineness of coupon.—He shall mark each paper as coupons so received, with the initials of the tax-payer from whom received, and the date of receipt, and shall deliver the same, securely sealed up, to the judge of the county court of the county, or corporation or hustings court of the city, in which such taxes, debts, or demands are payable. The tax-payer shall thereupon be at liberty to file his petition in said county or corporation court" (changed to circuit court by act of legislature, 1889–'90, p. 76) "against the Commonwealth. A summons to answer the petition shall be served on the Commonwealth's attorney, who shall defend the same. The petition shall allege that the petitioner has tendered certain coupons in payment of his taxes, debts, or demands, and pray that a jury be im-

paneled to try the question as to whether they are genuine coupons, legally receivable for taxes, debts and demands. Upon this petition an issue shall be made in behalf of the Commonwealth, which shall be tried by a jury. If it be finally decided in favour of the petitioner, that the coupons tendered by him are genuine coupons, legally receivable for taxes, debts, and demands, then the judgment of the court shall be certified to the treasurer, who upon receipt thereof, shall receive said coupons, and shall refund the money before paid by the petitioner out of the first money in the treasury, in preference to all other claims."

c

When the petition was heard the Commonwealth demurred thereto and moved to dismiss upon the ground that the acts of the General Assembly of March, 1871, and March, 1879, commonly called the funding bills, under which the coupons tendered were issued were unconstitutional; but the court overruled this motion, and after others by the Commonwealth were also overruled, which need not be recited here, as the first only is made the ground of the decision complained of, the jury found that the coupons were genuine and the court so decreed.

From this the Commonwealth appealed to her court of appeals, who reversed said decree, and ordered the dismissal of said proceedings on the ground that the acts of the Virginia legislature under which the coupons were issued were illegal and the coupon contract void.

Your petitioner avers that said decision was wholly erroneous, in that it is directly in conflict with the many decisions of this honourable court that these coupons constitute an inviolable contract between the State and the tax-payer which is protected by the Constitution of the United States and will be sustained by its courts.

d Poindexter *v.* Greenhow, 114 U. S., 279.

The validity of the acts under which these coupons were issued has been again and again considered and passed upon by this court in the last twenty years, who in 1889 reviewed and restated its previous decisions concerning them, and thus unanimously announced the law: "That the provisions of the act of 1871 constitute a contract between the State of Virginia and the lawful holders of the bonds and coupons issued under and in pursuance of said statute." McGahey *v.* Virginia, 135 U. S., 664–684. As the decision complained of is that "the whole coupon contract is absolutely illegal and void" (page 40 of the Record), your petitioner prays that it be reversed and annulled, for your honours have said in the above case (p. 667):

"It has always been contended on the part of the bondholders that this statute (act Mar. 30, 1871) created a contract between them and the State firm and inviolable, which the legislature had no constitutional right to violate or impair, and such was for several years the uniform holding of the supreme court of appeals of Virginia. See Antoni *v.* Wright, 22 Gratton, 833, November term, 1872; Wise *v.* Rogers, 24 Gratton, 169; Clarke *v.* Tyler, 30 Gratton, 134. A dif-

ferent view, however, has since been taken by the court of appeals, which now holds that the act of 1871 was unconstitutional from its inception, being repugnant to certain provisions of the constitution of the State adopted in 1869.

"An elaborate argument to this effect is contained in the opinion of the court rendered in one of the cases now before us, *e* Vashon *v.* Greenhow, decided January 14, 1886. In ordinary cases the decision of the highest court of a State with regard to the validity of one of its statute- would be binding upon this court, but where the question raised is whether a contract has or has not been made, the obligation of which is alleged to have been impaired by legislative action, it is the prerogative of this court, under the Constitution of the United States and the acts of Congress relating to writs of errors to the judgments of State courts, to inquire and judge for itself with regard to the making of such contracts, whatever may be the views or decisions of the State courts in relation thereto."

Wherefore your peti-oner prays a writ of error to the said supreme court of appeals of Virginia, and that the decision complained of be reversed and annulled; and, as in duty bound, he will ever pray, &c.

THE PETITIONER,
By Counsel.

MAURY & MAURY, *p. q.*,
1015 *Main St., Richmond, Va.*

1 VIRGINIA:

Pleas before the supreme court of appeals, held at the State court-house, in the city of Richmond, on Friday, March 23rd, 1894.

Be it remembered that heretofore, to wit, on the 13th day of October, 1892, came The Commonwealth of Virginia, by counsel, and filed her petition praying for a writ of error and supersedeas to a judgment rendered by the circuit court of the city of Norfolk on the 29th day of June, 1892, in a suit in which A. A. McCullough was plaintiff and the petitioner was defendant; which petition, with the transcript of the record, is as follows:

Petition.

COMMONWEALTH
vs.
A. A. MCCULLOUGH.

To the honorable judges of the supreme court of appeals of Virginia:

Your petitioner respectfully represents that it is aggrieved by a judgment of the circuit court of the city of Norfolk rendered, on the 29th day of June, 1892, in a suit against the said defendant by A. A. McCullough for the identification and verification of coupons, under an act approved February 22, 1890, entitled "An act to amend and re-enact section 408 of the Code of Virginia in reference

to proceedings to try genuineness of coupons." A transcript of the record in said suit is herewith presented, consisting of the petition of the plaintiff in the court below, the verdict of the jury, the judgment thereon, and the bills of exceptions of the defendant from "No. 1" to "No. 8," inclusive, which latter contain as brief and intelligible a statement of the case as the appellant is otherwise competent to make.

The following errors are assigned:

I.

The refusal of the court to dismiss the proceedings, on the motion of the defendant, as set forth in its first bill of exceptions.

The motion raised a plain constitutional question which the court could not avoid, and which it ought to have decided in favor of the State by dismissing the petition, and thus refusing to entertain a claim based upon an unconstitutional legislative provision. It had no jurisdiction to try such a case, and the defendant's motion must have necessarily prevailed had the reasoning of the court below coincided with that of the court of appeals of Virginia
2 in Greenhow *vs.* Vashon, 81 Va., 336, and with that of the Supreme Court of the United States in Vashon *vs.* Greenhow, 135 U. S., 716. The whole of the clause, "receivable for all taxes, debts, and demands due the State," is void. No part of it is distinct and separate from another part of the clause, nor could the manifest object of the legislature have been in anywise attainable by enacting such a clause in a mutilated form. (Black *vs.* Trower and *als.*, 79 Va., 123, and cases cited; Western Union Telegraph Co. *vs.* State, 62 Texas, 630.)

II.

The overruling of the demurrer, as set forth in the defendant's second bill of exceptions.

1. The first specification of cause of demurrer raises the constitutional question with more precision than it is expressed in the motion to dismiss the proceedings, and possibly in a manner more satisfactory as to the matter of form. As to the matter of substance, the appellant deems the authorities *supra* sufficient to maintain the issue on its part.

2. Pleadings must not be in the alternative. This is the fourth rule of those which tend to prevent obscurity and confusion in pleading. The statement in the petition that the coupons sued on were cut from the bonds of the Commonwealth, issued under the act of 1871, or from the bonds of the State, issued under the act of 1879, "is bad for uncertainty." (Stephen on Pleading, Tyler, 339–'40; Minor's Institutes, vol. IV, 1017.) The coupons in the suit should be identified on the face of the petition by the number of the bond, date, sum, and time of payment. (Kennard *vs.* Cass Co., 3 Dill., U. S. C., 147.) The bonds mentioned in the petition are described by their numbers only, and such description applies alike to the issue of 1871 and to the issue of 1879. The coupons

are described in a still more uncertain manner. The rules of pleading which tend to prevent obscurity and confusion are peculiarly applicable to proceedings to try the genuineness of coupons, and ought to be strictly observed.

3. When, in pleading, any right or authority is set up in respect of property, real or personal, some title to that property must of course be alleged in the party, or in some other person from whom he derives his authority. The pleadings must show title. This is the fifth of those rules of pleading which tend to produce certainty or particularity in the issue. Title is of the substance of the issue. It is a necessary allegation, and the omission of it is fatal on demurrer. (Stephen on Pleading, Tyler, 286, 300; Minor's Institutes, vol. IV, 967, 977, 980.)

4. As a condition of filing their petition under section 408, the plaintiff should have observed the requirements of section
3 407, as well as those of section 406. The petition shows very plainly that the requirements of section 407 were not complied with at all, and that the plaintiff did not pay the school tax, or it is included in the $498. for which he took the treasurer's receipt, which is made part and parcel of this petition. The suing of a State, even with its consent, without a strict compliance with the provisions of the statute providing the remedy, is unauthorized, and a palpable violation of the spirit of the eleventh amendment to Constitution of the United States. (McGahey *vs.* State of Virginia, 135 U. S., 671; *Ex parte* Ayres, Scott & McCabe, 123 U. S., 443, 516; Dunnington *vs.* Ford, 80 Va., 177; Henricks & Taylor *vs.* Dundass, 2 Wash., 50.)

5. The allegations herein are not merely superfluous and redundant, so that they may be rejected from the petition without materially altering the general sense and effect thereof. On the contrary, they are consistent with the act of 1871 and the act of 1879, which declare that the coupons shall be receivable for "all taxes, debts, and demands due the State which shall be so expressed on their face." But, being legally untrue, they are unintelligible; and, being inconsistent with the prior allegation, "other than school tax, and not liquor license," and that "no part of the tax for which said coupons were tendered was set apart for or appertained to public-school purposes, or the literary fund," they are repugnant. Pleadings must not be insensible nor repugnant. This is the first rule of those rules of pleading which tend to prevent obscuring and confusion. (Stephen on Pleading, Tyler, 332; Minor's Institutes, vol. IV., 1011–'12.)

[NOTE.—In the "preamble" to the entry of the judgment is the following absurd phraseology: "And the plaintiff, not joining in said demurrer, moved the court to overrule the same, and the same is overruled." This must be a clerical error, inasmuch as the plaintiff was compelled to join in the demurrer or abandon his petition and suffer a nonsuit. (Stephen on Pleading, Tyler, 92, 235; Minor's Institutes, vol. VI, 925.) But the bill of exceptions "No. 2" rectifies the mistake of this ridiculous entry.]

III.

The overruling of the demurrer, as set forth in the defendant's third bill of exceptions.

There is a fatal variance between the bonds mentioned in the petition and asked for or demanded by the defendant and those produced on the hearing in this cause. The State called for coupon bonds, but the bonds produced had no coupons attached, and there is no appearance of any having been detached. They are dated July 1, 1871, and mature July 1, 1905. The unmatured coupons are part and parcel of the bond. If these are genuine bonds there ought to be attached to them coupons from July 1, 1892, to July 1, 1905. We miss the Goddess of Liberty also from the bonds produced, with the proud motto, "*Sic semper tyran-is.*" She may have flown away with the unmatured coupons, if there were any. But bonds Nos. 1172, 4044, 4045, 4046, and 4392 in the petition mentioned, and also demanded by the defendant, are gone for good, coupons and all, and their non-production unaccounted for. We are left in the dark as to whether they were of the issue of 1871 or 1879, or were ever issued at all.

IV.

The court erred in rejecting the defendant's plea, as set forth in its fourth bill of exceptions.

The matter of the plea is a good defence to the plaintiff's action, and is not faulty in form under our system of pleading. It stood the test of a demurrer in Pendleton Company *vs.* Amy, 13 Wall., U. S, 297. There is no general issue in the proceeding to verify coupons, otherwise section 408 of the code would not have provided that, "upon this petition an issue shall be made in behalf of the Commonwealth, which shall be tried by a jury." Besides, no plea had been previously offered, and this was receivable under section 2364 of the code. The plaintiff knew that he was not the holder or bearer of the coupons, and, therefore, had no right of action. He feared to encounter this special plea, as well as the hazard of a demurrer thereto. He moved to reject, and succeeded, very much to the prejudice of the defendant, especially as the demurrer set forth in its second bill of exceptions had been overruled.

V.

The court likewise erred in rejecting the second plea offered by the defendant, as set forth in its fifth bill of exceptions, and for similar reasons to those above stated. We cite Pendleton Company *vs.* Amy, *supra.*

VI.

The court erred in rejecting the third plea offered by the defendant, as set forth in its sixth bill of exceptions.

The matter of the plea shows that the plaintiff had no rights to vindicate, and that the suit was a sham. It was brought *in fraudem legis.* If the court had permitted the State to prove the champer-

tous agreement between McCullough and Maury, so that it could have taken cognizance thereof, it would have been the duty of the court to "refuse longer to entertain the proceeding," and the latter gentleman would perforce be driven back into the ranks of the licensed "coupon brokers," who slightly remunerate "the mother of us all," for the privilege of preying on her vitals, in spite of the late "settlement of the public debt." (Am. & Eng. Enc. of Law, vol. III, 86, note 3; page 87, note 1; Commonwealth *vs.* Maury, 82 Va., 883.)

VII.

The court erred in rejecting the fourth plea offered by the defendant, as set forth in its seventh bill of exceptions.

It sets up a valid defence in bar of the action, for the reason that the plaintiff had no right to tender coupons for a part of his taxes, without paying the whole of it in gold or silver coin, United States Treasury notes, or national bank notes, and, upon payment, taking a receipt for the same from the treasurer. (See division 4, second assignment of errors, and cases cited.) Even if the presumption was in favor of the plaintiff on demurrer, the State had a right to rebut such presumption by plea, and was entitled to have a hearing on that point.

VIII.

The court erred more than ever in rejecting the fifth and last plea of the defendant, as set forth in its eighth and last bill of exceptions. It concludes to the country, as all such common traverses must do. (4 Minor's Insts., 639.) It negatives all the material averments of the petition, and throws the burden of proof on the plaintiff, as the law itself does. It comes as near being a plea of the general issue as the nature of the case will permit. There is no plea of the general issue, technically speaking, that is applicable to the case, and yet the statute giving the remedy requires that "an issue shall be made in behalf of the Commonwealth." It cannot be made without plea of law or fact, and so the court cut the State off from all defence whatever. Surely, if the court did not err in rejecting all and each of the pleas tendered by the State, section 3264 of the Code has ceased to be the law of the land, or most lawyers and judges of this State have been "wool-gathering" from the dawn of our jurisprudence, or pretty near it, at any rate.

IX.

The judgment is erroneous on its face, and, in some respects, it is contradicted by that portion of the record which consists of some of the State's bills of exceptions.

The court would not allow the State to plead to the petition, or answer the same, or defend the suit. No issue was made or tried. The proceeding did not amount to the dignity of an ordinary writ of enquiry. The jury was not sworn to try any issue, but only "to try whether the coupons tendered were gen-

uine legal coupons," &c., after the court had excluded the State from the privilege of denying the allegations of the petition in that behalf. The counsel for the defendant could not slip in a plea "edgeways," either written or *ore tenus*. He was "like a poor man at a frolic"—nothing to say, and less to eat. To be sure, the jury is made to say that they "find for the petitioner upon the issued joined," but the record shows that there was no issue made, and that they were not sworn to try any issue. It was palpably an *ex parte* proceeding in favor of the plaintiff, and in the very teeth of the act giving him the remedy. Our statute of jeofails is a pretty good doctor, but it does not cure such mortal wounds as this. (Petty *vs.* The Frick Company, 86 Va., 504–'5, citing Sydnor *vs.* Burke, 4 Rand., 161; McMillan *vs.* Dobbins, 9 Leigh, 422, and 4 Min. Insts., 581, and cases cited. After the jury was sworn, and the counsel for the pretended plaintiff had proceeded in a perfunctory manner through the customary routine of "indentification and verification," the defendant's counsel would have been glad of a legitimate opportunity "to cross-examine the witnesses, and to demur to the evidence." But how could he do so, "without any plea filed or issue joined in the case"? There had been enough error committed already, and the "crushed" spirit of the defendant's counsel was unequal to the insidious task of "piling Pelion on Ossa," even unto the crushing of the court itself. (Petty *vs.* The Frick Company, *supra*, 504.)

Whereupon your petitioner prays that a writ of error, with supersedeas, may issue to the said circuit court, and that the judgment complained of may be reversed, annulled, and set aside.

THE STATE OF VIRGINIA,
By Its Counsel.

We, the undersigned, practicing in the supreme court of appeals of Virginia, do certify that we are of opinion that the judgment complained of in the foregoing petition ought to be reviewed by the said court.

ELLIS & KERR.

Writ of error with supersedeas awarded. No bond required.
DRURY A. HINTON.

October 11th, 1892.

To the clerk of the supreme court of appeals, at Richmond, Va.

VIRGINIA:

In the Circuit Court of the City of Norfolk, on the 29th Day of June, 1892.

Be it remembered that heretofore, to wit, on the 20th day of May, 1892, came the petitioner, A. A. McCullough, and filed his petition in the following words and figures:

To the Hon. C. W. Hill, judge of the circuit court of the city of Norfolk:

Your petitioner, A. A. McCullough, respectfully represents unto your honor that he is a tax-payer of the city of Norfolk; that on the 30th day of April, 1892, being indebted to the State of Virginia $498, State tax, due by him on his real estate, other than school tax and not liquor license tax, he tendered W. W. Hunter, treasurer of said city and the officer appointed by law to receive said tax, in payment thereof, $498 in past-due coupons (as per schedule herewith), cut from bonds of the said Commonwealth, issued under an act of the General Assembly approved March 30, 1871, and entitled "An act to provide for the funding and payment of the public debt," or from bonds of the said State, issued under authority of an act of her General Assembly approved March 28, 1879, entitled "An act to provide a plan of settlement of the public debt," which said coupons are by law receivable for taxes, debts, and demands due the State of Virginia, who received the same for identification and verification and forwarded them to this court for that purpose, according to law. (See his receipt therefor herewith filed, marked Exhibit "B," and prayed to be taken as a part of this petition.) And thereupon your petitioner paid him the full amount of his said tax in money.

Your petitioner alleges that no part of the tax for which said coupons were tendered was set apart for or appertained to public school purposes, or the literary fund.

Your petitioner alleges that the said coupons are genuine legal coupons, past due, and legally receivable for all taxes, debts, and demands due the Commonwealth of Virginia; and your petitioner prays that a jury be impanelled to try the question whether said coupons are genuine legal coupons, legally receivable for taxes, debts, and demands due the Commonwealth of Virginia; and your petitioner prays that the State of Virginia be summoned to answer this petition, and that when said coupons are ascertained to be genuine legal coupons, past due, and receivable for taxes, debts, and demands due the Commonwealth of Virginia, this court will so certify, to the end that your petitioner may recover back the money so paid by him as aforesaid, according to law.

8 And your petitioner will ever pray.

A. A. McCULLOUGH,
By J. W. WILLCOX,
His Counsel.

The following is Exhibit "B," filed with the foregoing petition:

STATE REVENUE OFFICE,
NORFOLK, VA., *April* 30, 1892.

Received of A. A. McCullough, tax-receivable coupons of the State of Virginia, in payment of State real-estate tax for the year 1891, for the support of the government, to be handed the judge of the circuit court for identification and verification. The money for the taxes is paid.

Coupons of $3.00, Bond No. as follows:	Coupons of $15.00, Bond No. as follows:	Coupons of $30.00, Bond No. as follows:
1172	4044	2480
	4044	2480
3	4044	2480
	4044	
	4044	2448
	4044	2448
	4045	$180
	4045	
	4045	
	4045	
	4045	
	4045	
	4046	
	4046	
	4046	
	4046	
	4046	
	4392	
	4392	
	4392	
	4392	
	$315	

Total, $498.

W. W. HUNTER, *Treasurer.*

9 And now, at this day, to wit, on the 29th day of June, 1892.

This day came as well the plaintiff, by his attorney, as the Commonwealth of Virginia, by Ellis & Kerr, who have been employed by the board of sinking fund commissioners as leading counsel in this suit. And thereupon the said leading counsel moved the court to dismiss the said petition herein; and the said motion, being argued, is overruled. And thereupon the said leading counsel for the defendant says the plaintiff's petition is not sufficient in law, and plaintiff, not joining in said demurrer, moved the court to overrule the same, and the same is overruled. And thereupon the defendant offered a special demurrer, which was in like manner overruled. And thereupon the defendant asked leave to file special pleas herein, numbered from one to five, and the court doth refuse to allow said pleas to be filed.

And thereupon came a jury, to wit; E. L. C. Manning, Thos. B. Coleman, C. W. Waller, K. W. Old, J. Holliday, S. Boyd, Aaron Pearce, B. F. Batchelder, C. E. Hill, T. G. Wright, T. M. Sunderlin, and J. C. Dalby, who, being sworn to try whether the coupons

tendered are genuine, legal coupons, legally receivable for taxes, debts, and demands due the Commonwealth of Virginia, returned a verdict in these words: "We, the jury, find for the petitioner upon the issue joined, and we also find that the coupons mentioned in the exhibit filed with the petition and presented to us by the court, to wit, coupons for $498, are genuine, legal coupons, past due, and receivable for the taxes, debts, and demands due the Commonwealth of Virginia for which they were tendered." Whereupon, it is considered by the court, that the said coupons are fully proved as genuine, legal coupons, past due, and receivable for the taxes, debts, and demands due the Commonwealth of Virginia, for which they were tendered, which is ordered to be certified to the treasurer as required by law.

MEMORANDUM.—On the trial of this case the defendant, by its counsel, excepted to sundry rulings of the court herein, and tendered its bills of exceptions, numbered respectively from one to seven, which were received by the court, signed and sealed, and ordered to be made a part of the record herein. At the instance of the defendant, who desires to present a petition for a supersedeas to the judgment herein, it is ordered that the execution of this judgment be suspended for the period of ninety days.

The following is the defendant's bill of exceptions No. 1:

Be it remembered that on the first calling of this case, before
10 the jury was empanelled to try the same, the said defendant moved the court to dismiss all the proceedings therein, on the ground that the acts of the General Assembly on which the claim of the petitioners is based, to wit, the act approved March 30, 1871, and entitled "An act to provide for the funding and payment of the public debt," and the act approved March 28, 1879, entitled "An act to provide a plan of settlement of the public debt," are unconstitutional, null, and void to the extent that the coupons attached to the bonds issued under each of said acts were thereby made "receivable for all taxes, debts, and demands due the State."

But the court overruled the said motion to dismiss the said proceedings, and refused to dismiss the same, or any part thereof. To which opinion of the court overruling said motion and refusing to dismiss the said proceedings, or any part thereof, the said defendant, by its counsel, excepted, and tendered this, its bill of exceptions, which it prays may be signed, sealed and made a part of the record in the said cause, and the same is accordingly done.

C. W. HILL. [SEAL.]

The following is the defendant's bill of exceptions No. 2:

Be it remembered that before the jury was sworn to try this cause, the defendant filed its demurrer to the petition of the plaintiff, in the following words and figures, to wit:

The defendant says that the petition is not sufficient in law; and, for cause of demurrer thereto, the said defendant alleges—

1. The acts of the General Assembly in the said petition mentioned are in conflict with the seventh and eighth sections of arti-

cle VIII, of the constitution of the State of Virginia, and with sections 2 and 113 of the acts of the General Assembly, passed in pursuance thereof, approved March 15, 1884, to the extent that said acts of March 30, 1871, and of March 28, 1879, provide that the coupons therein mentioned shall be receivable at and after maturity for all taxes, debts, and demands due the State which shall be so expressed on their face.

2. The said petition does not state which of the bonds therein alleged were issued under said act of 1871, and which of them were issued under the said act of 1879. It fails to identify on the face thereof any of said alleged bonds by their respective dates, sums, and times of payment, and omits to allege the numbers, dates, and times of maturity of said alleged coupons, or any of them.

3. The said petition does not aver that said alleged coupons were the property of said petitioner, or that he was the owner, holder, or bearer thereof, or that he at any time had title thereto.

11 4. The said petition does not allege that the said plaintiff, at the time of said tender of coupons, paid to the said treasurer the whole of the tax due by him to the State, as required by section 407 of the Code of Virginia, the law in such case made and provided.

5. The said petition alleges that the coupons therein mentioned are legally receivable for all taxes, debts, and demands due the Commonwealth of Virginia, and prays that a jury be empannelled to try said question, and that, when the same shall be so ascertained, the court will so certify, to the end that said petitioner may recover back the money therein alleged to have been paid by him to the treasurer of the city of Norfolk.

But the court wholly overruled the said demurrer. To which opinion of the court overruling the said demurrer the defendant, by its counsel, excepted, and tendered this, its bill of exceptions, which it prays may be signed, sealed, and made a part of the record in said cause; and the same is accordingly done.

C. W. HILL. [SEAL.]

The following is the defendant's bill of exceptions No. 3:

Be it remembered that on the hearing of this cause, before the jury was sworn, and after the court had overruled the defendant's motion to dismiss the proceedings therein, and overruled the defendant's demurrer to the plaintiff's petition, the said defendant filed its written demand on the said plaintiff for production of the alleged bonds in said petition mentioned, and its demurrer for the supposed variance between said bonds and said petition, in the following words and figures, to wit:

The said defendant calls for the production of each and every of the supposed bonds from which the said coupons are alleged to have been cut or detached, in the said petition mentioned, and the same are produced and read to the said defendant in the following words and figures:

($1,000.00.) ($1,000.00.)
Number 2448. Number 2448.

TREASURER'S OFFICE, RICHMOND, VIRGINIA.

The Commonwealth of Virginia acknowledges herself indebted to Augustus J. Albert and Wm. J. Albert, trustees for Ann M. Lyman, or order, in the sum of one thousand dollars, payable thirty-four years after the first day of July, 1871, redeemable at the pleasure of the State after the first day of July, 1881, the interest payable semi-annually on the first days of January and July
12 of each year, at the treasury of the State, at the rate of six per cent. per annum, on presentation and surrender of the proper coupons hereto annexed, until the payment of said principal sum. This bond is issued under and by authority of an act approved the 30th day of March, 1871, entitled "An act to provide for the funding and payment of the public debt." Its redemption is secured by a sinking fund provided for by said act. "Bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder."

In testimony whereof, this bond has been signed by the treasurer and countersigned by the second auditor, as provided by law.

Richmond, Virginia, 1st July, 1871.

[SEAL OF VIRGINIA.] GEO. RYE,
Treasurer of the Commonwealth of Virginia.

Countersigned by—
ASA ROGERS, *Second Auditor.*

The last six months' interest payable with this bond.

Bond No. 2480, for same amount, same issue, and payable to Dr. Charles Carter, of Philadelphia, which, being read and heard, the said Commonwealth says that the said petition and the matters therein contained, in manner and form as the same are therein stated and set forth, are not sufficient in law for the said petitioner to have or maintain his aforesaid suit or petition against the said Commonwealth. And this the said defendant is ready to verify.

But the court overruled the said demurrer for the variance aforesaid. To which opinion of the court overruling said demurrer as aforesaid, the defendant, by its counsel, excepted, and tendered this its bill of exceptions, which it prays may be signed, sealed, and made a part of the record in said cause; and the same is done accordingly.

C. W. HILL. [SEAL.]

The following is the defendant's bill of exceptions No. 4:

Be it remembered that before the jury was sworn to try this cause the said defendant tendered the following plea in writing:

The defendant says that at the time of the alleged tender of the coupons in the petition mentioned, and at the time of the filing of

his said petition, and at the time of the filing of this plea, the
13 said petitioner was not the *bona fide* owner, holder, or bearer of the said alleged bonds and coupons, or any or either of them. And this the said defendant is ready to verify.

But the court rejected the same. To which rejection of the said plea, the defendant, by its counsel, excepted, and tendered this, its bill of exceptions, which it prays may be signed, sealed, and made a part of the record in said cause; and the same is accordingly done.

C. W. HILL. [SEAL.]

The following is the defendant's bill of exceptions No. 5:

Be it remembered that before the jury was sworn in this case the defendant tendered the following plea in writing:

The defendant says that at the time of the alleged tender of said coupons, and of the filing of the said perition and of this plea, all of said coupons were the absolute or qualified property of one Richard L. Maury, of the city of Richmond, and not then or now the absolute or qualified property of the said plaintiff, or of any other person or persons whomsoever. And this the said defendant is ready to verify.

But the court overruled the said plea and rejected the same. To which opinion of the court overruling and rejecting the said plea, the defendant, by its counsel, excepted, and tendered this, its bill of exceptions, which it prays may be signed, sealed, and made a part of the record in said cause; and the same is accordingly done.

C. W. HILL. [SEAL.]

The following is the defendant's bill of exceptions No. 6:

Be it remembered that before the jury was sworn to try this cause the defendant tendered the following plea in writing:

The defendant says that the said coupons, being in the custody of one Richard L. Maury, of the city of Richmond, who was the agent of the owner thereof, for the purpose of disposing of the same to the best advantage of his said principal, he, the said Richard L. Maury, caused the said coupons to be tendered, in the name of the said plaintiff, to the said W. W. Hunter, treasurer of the city of Norfolk, in part payment of the taxes of the said plaintiff, under an agreement with the said plaintiff, that when the same should be verified according to law, without expense or cost to the said petitioner, and the money paid by him for said taxes, recovered back from the said State, according to the prayer of said petition, he, the said Richard L. Maury, should receive the same, and pay to
14 the said A. A. McCullough a certain percentage or proportion thereof in consideration of the use of the name of the said plaintiff in said verification proceeding instituted by the said Richard L. Maury for the recovery of the money aforesaid. And this the said defendant is ready to verify.

But the court overruled the said plea and rejected the same. To which opinion of the court overruling and rejecting the said plea, the defendant, by its counsel, excepted, and tendered this, its bill of

exceptions, which it prays may be signed, sealed, and made a part of the record in said cause; and the same is accordingly done.

C. W. HILL. [SEAL.]

The following is the defendant's bill of exceptions No. 7:

Be it remembered that before the jury was sworn to try this cause the defendant tendered the following plea in writing:

The defendant says that the said plaintiff did not pay to the said treasurer the whole of the tax due by him to the State at the time of the alleged tender of the said coupons, in manner and form as required by section 407 of the Code of Virginia, the law in such case made and provided. And this the said defendant is ready to verify.

But the court overruled the said plea and rejected the same. To which opinion of the court overruling and rejecting the said plea, the defendant, by its counsel, excepted, and tendered this, its bill of exceptions, which it prays may be signed, sealed, and made a part of the record in said cause; and the same is accordingly done.

C. W. HILL. [SEAL.]

The following is the defendant's bill of exceptions No. 8:

Be it remembered that before the jury was sworn to try this cause the defendant tendered the following plea in writing:

The defendant says that the said plaintiff did not tender, in payment of his said indebtedness to the State, for his said State tax, due by him on his real estate, $498 in past-due coupons, cut from the bonds of the said Commonwealth, that were genuine, legal coupons, and legally receivable for all taxes, debts, and demands due the said State of Virginia, in manner and form as the said plaintiff in his petition has alleged. And of this the said defendant puts itself upon the country.

But the court overruled the said plea and rejected the same. To which opinion of the court overruling and rejecting the said plea, the defendant, by its counsel, excepted, and tendered this, its bill of exceptions, which it prays may be signed, sealed, and made a part of the record in said cause, and the same is accordingly done.

C. W. HILL. [SEAL.]

15 VIRGINIA:

In the clerk's office of the circuit court of the city of Norfolk, on the 14th day of July, 1892.

I, Lawrence L. Waring, deputy clerk of said court, do certify that the foregoing is a true abstract from the record in the suit of A. A. McCullough against the Commonwealth of Virginia; and I further certify that said abstract was not made until the petitioner had had due notice of the intention of the defendant to appeal, as appears by notice filed with the record.

Teste: LAW. L. WARING, *D. C.*

A copy.

Teste: GEO. K. TAYLOR, *C. C.*"

And now, at this day, to wit, at a supreme court of appeals held at the State court-house, in the city of Richmond, on Friday, March 23, 1894, came again the parties, by their counsel, and the court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that the coupon feature of the act of the General Assembly of Virginia entitled "An act to provide for the funding and payment of the public debt," approved March 30th, 1871, and of the act of the General Assembly of Virginia entitled "An act to provide a plan of settlement
16 of the public debt," approved March 28th, 1879, is repugnant to sections 7 and 8 of article 8 of the constitution of Virginia, and is therefore an illegal contract, and that the judgment of the said circuit court is erroneous. It is therefore considered that the said judgment be reversed and annulled, and that the Commonwealth recover against the defendant in error her costs by her expended in the prosecution of her writ of error and supersedeas aforesaid here; and this court proceeding to render such judgment as the said circuit court ought to have rendered, it is considered by the court that the petition of the plaintiff be dismissed, and that the Commonwealth recover against the said plaintiff her costs by her about her defence in said circuit court expended, which is ordered to be certified to the said circuit court of the city of Norfolk.

17 The following is a copy of the opinion of the court filed in this case:

Opinion Richardson, J., Richmond, Va., March 15, 1894.

COMMONWEALTH
v.
MCCULLOUGH.

COMMONWEALTH
v.
BARRY.

COMMONWEALTH
v.
DAVIS & CO.

COMMONWEALTH
v.
MCCULLOUGH & CO.

These cases are precisely alike, the same questions being involved in each of them. This being so, this opinion will be delivered in the first-named case of the Commonwealth *v.* McCullough, and is to apply equally to each of the other three cases of Commonwealth *v.* Barry, Commonwealth *v.* Davis & Co., and Commonwealth *v.* McCullough & Co. These cases, like the Virginia coupon cases, decided in April, 1885, and reported in 114 U. S., 269, and like Barry *v.* Edmunds, and other cases argued at the same time, decided in

February, 1886, and reported in 116 U. S., 550, and also like the group of eight cases, including McGahey *v.* Virginia, Huckless *v.* Virginia, and Vashon *v.* Greenhow, decided by the Supreme Court of the United States at the October term, 1889, and reported in 135 U. S., 664, etc., arise with respect to certain coupons alleged
18 to have been cut from bonds of the Commonwealth of Virginia issued under an act of her General Assembly approved March 30, 1871, and entitled "An act to provide for the funding and payment of the public debt," or from bonds of said Commonwealth issued under authority of an act of her General Assembly approved March 28, 1879, entitled " An act to provide a plan of settlement of the public debt," it being further alleged that said coupons " are by law receivable for taxes, debts and demands due the State of Virginia."

The defendant in error, A. A. McCullough, who was the petitioner in the court below, on the 20th day of May, 1892, presented his petition in the circuit court of the city of Norfolk, as follows:

" Your petitioner, A. A. McCullough, respectfully represents unto your honor that he is a tax-payer of the city of Norfolk. That on the 30th day of April, 1892, being indebted to the State of Virginia $498 State tax, due by him on his real estate, other than school tax, and not liquor license tax, he tendered W. W. Hunter, treasurer of said city, and the officer appointed by law to receive said tax, in payment thereof $498 in past-due coupons (as per schedule herewith), cut from bonds of the said Commonwealth issued under an act of the General Assembly approved March 30, 1871, and entitled "An act to provide for the funding and payment of the public debt," or from bonds of the said State issued under authority of an act of her General Assembly, approved March 28, 1879, entitled "An act to provide a plan of settlement of the public debt," which said coupons are by law receivable for taxes, debts and demands due the State of Virginia, who received the same for identification and verification and forwarded them to this court for that purpose, according to law. (See his receipt therefor herewith filed, marked Exhibit " B," and prayed to be taken as a part of this petition.) And thereupon your petitioner paid him the full amount of said tax in
19 money. Your petitioner alleges that no part of the tax for which said coupons were tendered was set apart for or appertained to public school purposes or the literary fund. Your petitioner alleges that the said coupons are genuine, legal coupons, past due, and legally receivable for all taxes, debts and demands due the Commonwealth of Virginia; and your petitioner prays that the State of Virginia be summoned to answer this petition, and that when said coupons are ascertained to be genuine, legal coupons, past due and receivable for taxes, debts and demands due the Commonwealth of Virginia this court will so certify, to the end that your petitioner may recover back the money so paid by him as aforesaid, according to law, and your petitioner will ever pray.

(Signed) A. A. McCULLOUGH,
By J. W. WILLCOX,
His Attorney.

The case came on to be heard on the 29th of June, 1892, when the defendant, The Commonwealth of Virginia, moved to dismiss the petition on the grounds that the acts approved March 30, 1871, and March 28, 1879, upon which these proceedings were based, are unconstitutional and void to the extent that the coupons attached to the bonds issued under each of these acts were thereby made "receivable for all taxes, debts, dues, and demands due the State;" but the court overruled the motion, and the defendant excepted.

Thereupon the defendant demurred to said petition, but the court overruled the demurrer. And then the defendant tendered five several pleas in writing, each of which was rejected; and to the action of the court overruling said demurrer and rejecting said pleas in writing, the Commonwealth took her several exceptions.

The principal ground of demurrer, and the only one that need be mentioned here, is this: That the acts in the petition men-
20 tioned are in conflict with the 7th and 8th sections of article VIII of the constitution of Virginia, and with sections 2 and 113 of the act of the General Assembly of Virginia, passed in pursuance thereof, and approved March 15, 1884, to the extent that said acts of March 30, 1871, and of March 28, 1879, provide that the coupons therein mentioned shall be receivable after maturity for "all taxes, debts, dues, and demands due the State, which shall be so expressed on their face."

It appears from the record that a jury was impaneled and sworn to try the issue, and responded by their verdict as follows:

"We, the jury, find for the petitioner upon the issue joined, and we also find that the coupons mentioned in the petition are genuine, legal coupons, legally receivable for the taxes, debts, and demands due to the Commonwealth of Virginia, for which they were tendered."

And thereupon the circuit court adjudged and determined that "the said coupons are fully proved as genuine, legal coupons, legally receivable for the taxes, debts, and demands due the Commonwealth, for which they were tendered."

At the instance of the defendant, The Commonwealth of Virginia, the case is here on a writ of error to said judgment.

The first question for consideration arises upon the motion of the defendant in error to dismiss the writ of error awarded the Commonwealth on the grounds—first, that the minimum jurisdictional amount is not involved; and, second, that the constitutionality of no law is involved. This question of jurisdiction, which confronts us at the threshold, presents no serious difficulty and is easily disposed of. One of the questions involved in the issue tried was whether the coupons tendered were legally receivable for all taxes, debts, dues, and demands due the Commonwealth of Virginia.

There could be no other issue, because the said acts of March
21 30, 1871, and of March 28, 1879, respectively, provide expressly that the coupons attached to the bonds issued thereunder shall "be receivable at and after maturity for all taxes, debts, dues, and demands due the State;" and said acts expressly require that this be expressed on their face. Neither of said acts authorize

coupons receivable, after maturity, merely for "taxes, debts, and demands due the State," nor for taxes other than the fund directed by the constitution to the support and maintenance of the public free schools, and the liquor-license tax. On the contrary, the language is "for all taxes, debts, dues and demands due the State, which shall be so expressed on their face." This quality of receivability presents the case of an entire contract that cannot be apportioned—a case where the bargain is one, the consideration is one, and the coupon covenant is one and inseparable; and as the legal receivability of the coupons in question must depend upon the authority conferred by one or the other or both of the acts last above referred to, it would seem to follow, as a matter of course, that any coupon cut from bonds issued under either of said acts that has not on its face the words "receivable after maturity for all taxes, debts, dues and demands due," etc., is not a legally receivable coupon; or, in other words, is a coupon issued without authority of law.

Yet, in the petition it is alleged that the petitioner, being indebted to the State of Virginia $498 State tax, due by him on his real estate, other than school tax and not liquor-license tax, tendered to W. W. Hunter, treasurer of said city and the officer appointed by law to receive said taxes in payment thereof, $498 in past-due coupons . . . cut from bonds of the said Commonwealth, issued under an act of the General Assembly approved March 30, 1871, . . . or from bonds of the said State, issued under authority of an act of her General Assembly approved March 28, 1879, etc., . . .
22 which said coupons are by law receivable for taxes, debts, and demands due the State of Virginia, who received the same, etc.

This form of declaring on or describing the legal receivability of the coupons was evidently intended as a means of avoiding the necessary effect of the decisions of the Supreme Court of the United States in Huckless *v.* Childrey, and in Vashon *v.* Greenhow, 135 U. S., 709 and 713, decided in 1889, and hereinafter to be more particularly referred to. It is, however, obvious that the coupons thus described could not be genuine, legal coupons, receivable for all taxes, debts, dues, and demands due the State.

But, notwithstanding the above description, which makes the coupons anything else than genuine, legal coupons, the petitioner proceeds to allege in his petition "that said coupons are genuine, legal coupons, past due, and legally receivable for all taxes, debts, and demands due the Commonwealth of Virginia." Obviously, the two conflicting descriptions cannot stand together; and it is equally clear that neither is an accurate description of a genuine, legal coupon, legally receivable for all taxes, debts, dues, and demands due the State. Such the coupons must be, or else they are unauthorized by law and are not genuine, legal coupons, but are spurious and illegal. Coupons receivable for taxes, debts, and demands due the State, other than the school fund and the liquor-license tax, is altogether a different thing, in substance as well as form, from coupons receivable "for all taxes, debts, dues, and demands," etc. The former is without authority of law, and therefore illegal and void;

while the latter gives expression to the very form and substance of the coupon contract, expressly prescribed by the said acts of March 30, 1871, and of March 28, 1879. The statute of jeofails has accomplished much in the way of amendments, and of dispensing with matters in pleading deemed immaterial; but that statute
23 has never been carried to the absurd extent of allowing one contract to be set up in pleading, and allowing a recovery on a materially different contract.

Moreover, the prayer of the petition is "that a jury be impaneled to try the question whether said coupons are genuine, legal coupons, legally receivable 'for taxes, debts and demands due the Commonwealth of Virginia,'" etc., thus again attempting to set up unauthorized, illegal coupons instead of genuine, legal coupons, receivable "for all taxes, debts, dues and demands due the State." The coupons, if genuine, legal coupons, were, *ex vi termini*, receivable for all taxes, debts, dues and demands, or they were receivable for none. The coupon feature of the contract is entire, and cannot be separated into parts, and it must be valid as a whole, or it is illegal and therefore invalid for any purpose. The petitioner's informal, irregular and illegal mode of procedure was evidently imparted to and influenced the mind of the jury; that is, if we may judge by their peculiar verdict. They say, "We, the jury, find for the petitioner upon the issue joined, and we also find that the coupons mentioned in the exhibit filed with the petition and presented to us by the court, to wit, coupons for $498, are genuine, legal coupons, past due and receivable for the taxes, debts and demands due the Commonwealth of Virginia, for which they were tendered," etc. And the judgment of the court was "that the said coupons are fully proved as genuine, legal coupons, past due, and receivable for the taxes, debts and demands due the Commonwealth of Virginia, for which they were tendered," etc. It is too plain for argument that there are not in existence any genuine, legal coupons, such as are thus described, cut from bonds issued either under the act of March 30, 1871, or that of March 28, 1879. If, then, the jury, instead of being sworn to try the issue, as prescribed by the statute, whether the coupons tendered were genuine, legal coupons, receivable after maturity for all taxes, debts, dues and demands due," etc., were
24 sworn to determine whether the said coupons were genuine, legal coupons, legally receivable merely "for taxes, debts, dues," etc., or were so receivable "for the taxes, debts and demands for which they were tendered" (and it appears from the record that they were, in effect, so sworn), then the jury were sworn to try an issue responsive to the description of the coupons mentioned in the petition, but entirely variant from, outside of and beyond the coupon contract, and an issue at variance with that directed by the statute.

These were the matters necessarily involved in the Commonwealth's motion to dismiss, and especially in her demurrer to the petition. The validity of a statute of the State was thus directly and unmistakably brought in question. The petition alleged that the coupons tendered were genuine, legal coupons, legally receiv-

able for the tax for which they were tendered; the verdict of the jury was to the same effect, and such was the judgment of the court. Hence the validity of the coupon feature of the acts of March 30, 1871, and of March 28, 1879, was necessarily involved, and had not the court below thought so it could never have pronounced the judgment it did. It is, therefore, manifest that this court has jurisdiction of the cases.

We come now to the main question in the case, and that is, whether the coupon feature of the funding acts, on which the proceedings in this case were based, are in conflict with the constitution of Virginia. But before entering upon the discussion of this question, which is one of great importance both to the State and her creditors, it is important to refer to the fact that the indebtedness of Virginia has at last been justly, equitably and satisfactorily settled by the State and her creditors by an adjustment known as the "Olcott settlement." However, a small minority of such creditors, who hold bonds and coupons past due and to become due, amounting to about $2,300,000, obstinately hold out and refuse to accept the liberal terms of said settlement, and, with seeming remorseless vindic-
25 tiveness, continue to harass the State by a perpetual clamor for the stipulated "pound of flesh," and this they do regardless of the state of poverty and wretchedness to which the people of Virginia were reduced at the time of the passage of the original funding bill of March 30, 1871; regardless of the fact that the old State, miserably poor and dependent in other respects, emerged from the unfortunate civil war in which she had become so disastrously involved, and in which her people honestly and bravely contended for what they believed to be right, to find herself, without her consent, stripped by the hand of governmental power, exercised as a necessary war measure, of one-third of her territory, population, and taxable values, and in addition thereto, the loss to the residue of the old State of a vast property upon the faith of which her debt had been contracted; regardless of the fact that the old State was during the entire period of the war the tramping-ground, the battle-ground, and burying-ground of vast contending armies, and regardless of the fact that the Virginia people—men, women, and children—were so utterly poor that they were most indifferently supplied with food and were unable to supply themselves with comfortable, and in numberless cases, even with decent clothing, and too poor to supply themselves with teams and implements essential to the cultivation of their fields, and that her children were growing up in ignorance without the means of education. In addition to all this, the old Commonwealth was deprived of her proud position of statehood and reduced to that of a conquered province, known as district No. 1. However deeply humiliating all this may be, it is at *last* but a feeble picture of the real poverty and suffering to which our people were reduced. They only who are ignorant of the real state of facts can be excused for imputing dishonorable motives to the people of Virginia. There is another class of persons who, urged on by illiberal and selfish views, or
26 prompted by the vain desire for much speaking and writing,

have been willing to contribute the weight of their influence, real or imaginary, to the ignoble cause of defaming a brave and generous people. And by such people the public sentiment has been misled and great wrong done to the State. But, notwithstanding all this, the true inwardness of this relentless war by the coupon-holders against the State was at last seen by the highest court of the land, as exemplified in its decisions in Huckless *v.* Childrey, and Vashon *v.* Greenhow, *supra;* by which previous decisions of that court were greatly modified. It is in the light of these two decisions that we now propose to consider the question as to the validity of the coupon feature of the original funding act of March 30, 1871. We do not assail that act as unconstitutional as an entirety. We simply hold that the coupon feature of the act—the coupon contract—which is readily separable from the rest of the act—is repugnant to sections 7 and 8 of article VIII of the Constitution of Virginia, and is, therefore, an illegal contract. The validity of the bonds issued under and by authority of said acts of March 30, 1871, and March 28, 1879, is not denied; nor is it denied that the bondholders are entitled to the interest on the bonds, to be collected in the ordinary way, but we do deny that it can be collected through the medium of the illegal coupon-, which have been most aptly designated the "cut-worm of the treasury."

In considering whether or not the coupon feature of the act of 1871 is repugnant to said provisions of the State constitution we will not repeat at length the constitutional arguments which have been so often urged heretofore, which have engaged the serious attention of many of the ablest legal minds, and which have been deliberately passed upon by the Supreme Court of the United States. It is important, however, to repeat so much of the argument, judicial and otherwise, as supports the conclusion arrived at by this court, and seem- to be, upon principle and authority, in perfect
27 accord with the decisions of the Supreme Court of the United States in the cases of Huckless *v.* Childrey and Vashon *v.* Greenhow, *supra.*

Coming, then, directly to the question, whether the coupon contract is repugnant to said provisions of the State constitution, and therefore illegal and absolutely void, it may, with the utmost propriety, be said: That the unfortunate decision by this court in Antoni *v.* Wright, 22 Gratt., 813, has indeed proved to be "Illiad of all our woes" touching the State's indebtedness; and but for it there never could have been any difficulty in the way of a just and equitable adjustment between the State and her creditors. If this court, instead of making the decision it did in that case, had promptly pronounced against the palpably illegal, and therefore unconstitutional, coupon feature of the act of March 30, 1871, the debt would have been promptly settled and all this long and bitter controversy avoided. Antoni *v.* Wright was decided by a bare majority of a court of three judges, Moncure, P., not sitting, and Staples, J., dissenting and insisting that the said act of March 30, 1871, which provides that the coupons attached to the bonds issued thereunder shall, after maturity, be receivable "for all taxes, debts, dues and

demands due the State," is repugnant to the State constitution, notwithstanding the opinion of the bare majority, that that feature of the act was not repugnant to the constitution, and constituted an irrepealable contract on the part of the State with the holders of such coupons.

In the opinion of the majority of the court it was admitted that "one Legislature cannot by an act of ordinary legislation bind or control in any manner subsequent legislatures;" but it was said that "by special legislation, amounting to a contract, a subsequent legislature may be bound." In the light of this admission, in connection with the exception stated, it would seem to be sufficient to reply that the ingenuity of man cannot suggest anything
28 more essentially and completely within the scope of ordinary legislation than is the legislative power to assess, collect, control and disburse, through recognized agents, the State revenues.

But, in Antoni *v.* Wright, it was not denied, nor is it deniable, that a good and sufficient consideration is essential to the validity of a contract. And the dissenting opinion of Judge Staples denied with evident correctness that there was any consideration going to the State for the concession in the funding act touching the receivability of such coupons for all taxes, etc., as the creditor gave up nothing in return, and the State remained bound by its bonds for two-thirds and by its certificates for the remaining third of its original indebtedness; and, as is axiomatic, asserted that there can be no valid contract founded on a law which violates the constitution of a State.

And Judge Staples, in his very able dissenting opinion, insisted also that the contract in this case was void because of its repugnancy to sections 7 and 8 of article VIII of the constitution of Virginia, by which certain portions of the State revenue are dedicated to the support of public free schools.

In the opinion of the majority, Judge Bouldin, speaking for the court, declared, in effect, that the duties to pay the public debt and to support the public free schools are both obligatory under the constitution and that both may be discharged, and that there was no conflict between the funding act and section 8 of article VIII of the constitution. In whatever crudity this idea may have originated, it is certain that the Supreme Court of the United States has arrived at a very different conclusion, as is shown by its decision in Vashon *v.* Greenhow, *supra*.

At all events, the opinion of the court in Antoni *v.* Wright is pregnant with a tacit admission that if such conflict did exist, then the funding bill providing that such coupons should be receivable in payment of all taxas, debts, dues, and demands due the
29 State would be unconstitutional, at least to the extent of such conflict. The authority of that decision has been recognized in several subsequent decisions of this court as then constituted, and in one of them—Clark *v.* Tyler, 30th Gratt., 134, decided in 1878—it was said that this decision (Antoni *v.* Wright) "must be held to be the settled law of this State." And in that case (Clark *v.* Tyler) this court even held that fines, and in Williamson *v.* Massie, 33

Gratt., 237, the capitation tax, both of which had been by the constitution dedicated to public free schools, might be paid in such coupons.

At this juncture the legislature passed an act, which was approved March 15, 1884, and which was referred to in the answer of Greenhow, treasurer, in the case of Vashon *v.* Greenhow, *supra*, requiring taxes assessed for public free school purposes to be collected and kept separate from other taxes, and forbidding the receipt of anything other than current money for such taxes.

This act was reviewed by this court in the case of Greenhow, treasurer, *v.* Vashon, 81st Va., 350, and was held constitutional and valid, notwithstanding the decisions in Antoni *v.* Wright, Clark *v.* Tyler, and Williamson *v.* Massey, *supra*, to the effect that such coupons were receivable in payment of all taxes, debts, dues, and demands due to the Commonwealth. And the decision of this court in that case was affirmed on appeal by the Supreme Court of the United States. See Vashon *v.* Greenhow, 135 U. S., 716.

We cannot forbear to quote from Mr. Justice Bradley, who pronounced the opinion of the court in that case, as follows:

"The other ground on which the court of appeals (of Virginia) placed its decision was that the act of 1871, as applied to the moneys due and payable to the 'literary fund,' or fund for the maintenance of the public free schools, was contrary to the constitution of the State adopted in 1869. The seventh and eighth sections of the eighth article of the constitution declare as follows:

30 "SECTION 7. The General Assembly shall set apart, as a permanent and perpetual literary fund, the present literary fund of the State, the proceeds of all public lands donated by Congress for public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the State by forfeitures, and all fines collected for offences against the State, and such other sums as the General Assembly may appropriate.

"SECTION 8. The General Assembly shall apply the annual interest on the literary fund, the capitation tax provided for by this constitution for public free school purposes, and an annual tax upon the property of the State of not less than one mill and not more than five mills on the dollar, for the equal benefit of all the people of this State."

The learned justice then proceeds as follows:

"The court, in its opinion, held that in view of these constitutional provisions the legislature had no power to declare or to contract that the moneys due to the literary fund might be paid in coupons attached to the bonds authorized by the act of 1871, and that such a payment would be repugnant to the very nature of the fund. It might well be added that coupons thus paid into the fund would be of no value whatever to it, for as soon as paid into the treasury they would become as valueless as if canceled and destroyed, unless some provision was made for their reissue and the putting of them into renewed circulation. This would be opposed to the whole tenor of the act, would be unjust to the coupon-holders

themselves, and would probably be contrary to the acts of Congress in reference to the creation of paper money. We think that the position of the court of appeals in this case is well taken, that coupons could not be made receivable as a portion of the literary fund; and that if they could not be received as part of the fund, they could not be made receivable for the taxes laid for the purpose of maintaining said fund. . . . In our judgment, the law
31 requiring the school tax to be paid in lawful money of the United States was a valid law, notwithstanding the provisions of the act of 1871; and that it was sustained by the sections of the constitution referred to, which antedate the law of 1871, and override any provisions therein which are repugnant thereto."

In Huckless *v.* Childrey, 135 U. S., page 709, the Supreme Court of the United States held that sections 399, 536 and 538 of the Virginia Code of 1887, which forbid a treasurer to receive for a license tax for selling liquor by retail coupons attached to bonds authorized by the act of 1871, were constitutional and valid.

And yet the Supreme Court of the United States, in McGahey *v.* Virginia, 135 U. S, at page 668, declared in October, 1889, that that court "had determined," in Hartman *v.* Greenhow, 102 U. S., 672, decided in 1881, and in Antoni *v.* Greenhow, 107 U. S., decided in March, 1883, and in the Virginia coupon cases, 114 U. S., 269, decided in April, 1885, and in all the cases on the subject that had come before that court for adjudication, and that "it may be laid down as undoubted law that the lawful owner of any such coupons has the right to tender the same, after maturity, in absolute payment of all taxes, debts, dues and demands due from him to the State."

However it may appear, it is a fact of record that the same court did, at the same October term, 1889, in the cases of Huckless *v.* Childrey, and of Vashon *v.* Greenhow, hold that the lawful owner of such coupons has not the right to tender the same, after maturity, in absolute payment of either the tax imposed on a license to retail liquor or the taxes imposed for the maintenance of the public free schools, and that the acts of the General Assembly prohibiting the receipt of such coupons and requiring current money of the United States in payment of such taxes are constitutional and valid.

The manifest inconsistency of the last two decisions named
32 with the former decisions of that court can only be explained on the theory that for the reasons set forth in the opinions of the court in Huckless *v.* Childrey and in Vashon *v.* Greenhow, the court, upon deliberate and mature consideration, determined to so far retrace its steps as to effect a most material modification of its former views, and to hold, as it did, that although the act of 1871 is broad enough in its phraseology—that is, the coupon feature of the act—to embrace all taxes, etc., yet maturer consideration had induced the conclusion that that act could not be held to embrace all taxes, etc., without a palpable violation of the constitution of Virginia, and that said act was at least repugnant in part to the eighth section of article VIII of that constitution, and to that extent, at least, unconstitutional and void.

It must be borne in mind that it is not to the repugnancy of the

act of 1871 to the later acts of the General Assembly forbidding the receipt of such coupons in payment of certain taxes, etc., but to the repugnancy of the coupon feature of the act of 1871 to the eighth section of article VIII of the constitution that the Supreme Court ascribes the invalidity of the coupon feature of the act, which, the court remarks, is antedated by the said constitutional provision. Hence such invalidity, or the vice which tainted the whole coupon contract, existed from the inception of that contract, and was not superinduced by the subsequent acts of the General Assembly. Hence the Supreme Court purposely, though with evident reluctance, modified its previous rulings, deliberately intended to do so, as is made manifest from what is stated on page 684, 135 U. S., where, after reviewing every case that had come before that court involving questions growing out of the act of 1871, Mr. Justice Bradley said: "Without committing ourselves to all that has been said, or even to all that has been adjudged, in the preceding cases that have come before the court on the subject, we think," etc.

Mr. Justice Bradley, speaking apparently for the entire court,
33 proceeds to render the opinion in the cases of McGahey *v.* Virginia and seven other cases, the seventh being the case of Huckless *v.* Childrey, and the eighth being the case of Vashon *v.* Greenhow.

Now, we feel entirely safe in laying it down as an indisputable fact that it has been solemnly adjudged by the highest court in the land that the coupon feature of the act of 1871, so far as its validity was passed upon in Huckless *v.* Childrey and in Vashon *v.* Greenhow, was unconstitutional and void. The same is true of the act of 1879, because the same vice enters into and invalidates them both.

Such being an undeniable postulate, the next and very material question that arises is, What is the effect of the vice of illegality and consequent unconstitutionality as to part of an entire contract, whether by statute or otherwise; that is, as respects an entire contract incapable of being apportioned? In other words, is it not a universally accepted principle of the law of contracts that an illegal element, or the vice of illegality entering into or constituting part of the promise or consideration of an entire contract, renders the whole contract absolutely illegal and void? This question, upon principle and authority, can receive none other than an affirmative answer. No impartial mind can for a moment hesitate to pronounce the coupon contract an entirety, and incapable of separation into parts or of being construed as illegal and invalid as to part and yet legal and valid as to the residue, for the simple legal reason that the bargain is one, the consideration is one, and the covenant is one, and the vice of illegality, in part, entering in the coupon contract from its inception, the whole is void.

The coupon contract, as expressed on the face of each coupon, is that the coupons shall be receivable after matu*rity* "for all taxes, debts, dues and demands due," etc.; and when any tax, of whatever character, is by judicial determination or otherwise exempted
34 from the operation of the very terms of that contract, it can be for no other reason than that the contract is tainted with

illegality, and is, therefore, wholly void, and such is necessarily the effect of the decisions of the Supreme Court in Huckless *v.* Childrey and in Vashon *v.* Greenhow, *supra.*

"The concurrent doctrine of the text books on the law of contracts is that if one of two considerations of a promise be void merely, the other will support the promise: but that if one of two considerations be unlawful the promise is void. When, however, for a legal consideration, a party undertakes to do one or more acts and some of them are unlawful, the contract is good for so much as is lawful and void for the residue. Whenever the unlawful part of the contract can be separated from the rest it will be rejected and the remainder established. But this cannot be done when one of two or more considerations is unlawful, whether the promise be to do one lawful act or two or more acts part of which are unlawful, because the whole consideration is the basis of the whole promise. The parts are inseparable." Widoe *v.* Webb, 20th Ohio St., 431, citing Metcalf on Contracts 246, Addison on Contracts 905, Chitty on Contracts 730, 1 Parsons on Contracts 456, 1 Parsons on Notes and Bills 217, Story on Prom. Notes section 190, Byles on Bills 111, Chitty on Bills 94.

And in the same case it is said: "Whilst a partial want or failure of consideration avoids a bill or note only *pro tanto*, illegality in respect to a part of the consideration avoids it *in toto*. The reason of this distinction is said to be founded—partly, at least—on grounds of public policy, and partly on the technical notion that the security is entire and cannot be apportioned; and it has been said with much force that where parties have woven a web of fraud or wrong it is no part of the duty of courts of justice to unravel the threads and separate the sound from the unsound;" citing Story on Prom. Notes and Byles on Bills, *supra*, and then adds: "And in general it makes no difference as to the effect whether the illegality be at common law or by statute."

In Noyes' Ex'or *v.* Humphries, 11th Gratt., 636, this court fully recognized and applied the same doctrine. In that case N. rented property from T., who undertook to have certain improvements erected thereon, and he contracted with H. to do the work. H. proceeded to do part of the work and received some payments from T., but finding that T. was embarrassed he stopped the work, and declared that he would proceed no further with it. N. then told H. to go on and finish the work and he would pay him. H. then went on and finished the work, and after it was done settled with T. and took his bond for the balance due him. T. being unable to pay him, H. sued N. for the whole balance due him for the work. Held: "That the promise alleged in the declaration being an entire promise to pay as well for that done before as that done after the promise, even if the promise would have been valid as to the work to be done, it was collateral as to that which had been executed, and being an entire promise it is void as to the whole."

In that case Allen, P., in delivering the opinion of the court, used the following pertinent language: "The debt had been incurred, and though there may have been a sufficient consideration of benefit to the landlord in avoiding the loss of rents and the injury result-

ing from leaving the work in an unfinished state to have supported a promise to pay for the liability of Thompson, the promise would have been collateral, though on a good consideration, and must be in writing to be valid. But where the verbal promise is entire and part of it relates to a matter which renders it necessary under the statute that the promise should be in writing, the whole promise is void. Being entire and part of it void, the whole is defective."

In the light of the case last referred to, there can be no
36 question as to the applicability of the same principle to the present case. Here the undertaking, expressed on the face of the coupon was that it should be receivable at and after maturity "for all taxes, debts, dues and demands due the State;" but this court and the Supreme Court of the United States have solemnly declared in Vashon *v.* Greenhow, *supra*, that "the legislature had no power to declare or contract that moneys due to the literary fund might be paid in coupons attached to the bonds authorized by the act of 1871." It being, then, an undeniable fact that the coupon contract is an entire contract, it therefore follows, *ex necessitati*, that the whole promise is illegal and void.

In De Beershi *v.* Paige, 36 N. Y. R., 537, Davies, Ch. J., said: "It is well settled if part of an entire contract be void under the statute of frauds, the whole is void; that the party shall not be permitted to separate the parts of an entire agreement and recover on one part, the other being void;" citing Chater *v.* Becket, 7 Term, 201; Crawford *v.* Murrall, 8 John, 253. And in the same case it is said: "When a note is given in payment of an account, some of the items of which are legal and some illegal, although an action would lie for so much of the account as is made up of lawful items, the note itself is entirely void; that the plaintiff cannot recover on the note to the extent of the lawful items, although they are distinctly severable from the unlawful."

In Thayer *v.* Rock, 13th Wend., 53, a contract had been made as well for the sale of real as of personal property, which was entire, founded upon one and the same consideration, and the same not being reduced to writing, it was held that it was void, as well in respect to the personal as the real property. In that case Ch. J. Savage said: "The action in this case was brought to enfore that part of the contract which, if it had stood alone, would have been good, but being a part of an entire contract embracing another subject, in respect to which it was void, the whole was void.
37 The contract was to sell the mill site and privileges, and also the wood and timber, and was an entire contract, entered into for one and the same consideration; the two subjects cannot be separated, and being void in part is totally void."

So in the present case, the contract was that the coupons should be receivable, at and after maturity, for all taxes, debts, dues and demands due the State, which is an entire contract, but the petitioner below, the defendant in error here, seeks to separate the good from the bad and to recover upon the averment that the coupons tendered by him were tendered in payment of taxes due by him, "other than school tax, and not liquor-license tax." He cannot in

this way be permitted to separate into parts an entire contract and recover on the parts supposed to be good, the others being void. In other words, he seeks to recover upon a contract which does not exist.

In Craig *v.* State of Missouri, 4th Peters, at page 436, Ch. J. Marshall, speaking for the Supreme Court, said: "The certificates for which this note was given being in truth 'bills of credit,' in the sense of the Constitution, we are brought to the inquiry: Is the note valid of which they form the consideration?"

It has been long settled that a promise made in consideration of an act which is forbidden by law is void. It will not be questioned that an act forbidden by the Constitution of the United States, which is the supreme law, is against law. So, in the present case, the promise, written on the face of the coupon, is forbidden by the constitution of Virginia, the supreme law of the State, and subordinate only to the Federal Constitution and laws made in pursuance thereof, and being tainted with illegality in part is void *in toto.*

In Thompson *v.* Collins, 4th Head (Tenn.), 441, the court said:

"A contract containing on its face this or any other illegal
38 stipulation cannot be enforced in a court of law or equity. No court will give its active aid upon such a contract."

In the case of Filson's Trustee *v.* Himes, 5 Pa. St., 452, Chief Justice Gibson concludes an able and instructive opinion in this language: "But in those cases distinct bargains were put in the same note; in this the bargain is one, the consideration is one, and the covenant is one, and all is void."

Cases holding the same doctrine might be multiplied almost without end; but it cannot be necessary to cite more cases in support of a principle universally accepted as the law in respect to entire contracts containing the vice of illegality in part.

Inasmuch, therefore, as the coupon feature of the funding act of 1871, which is simply an incident to the main purpose of the act, and is readily separable therefrom, and inasmuch as said coupon feature constituted a contract which is undeniably an entire contract and incapable of being separated into parts, and inasmuch as it has been declared by the highest court in the land that that contract is tainted in part with the vice of illegality, it necessarily follows that, in the light of the authorities cited above, the whole coupon contract, or covenant, is absolutely illegal and void. This, it seems to us, is clearly and necessarily the effect of the decisions of the Supreme Court of the United States in the cases of Huckles *v.* Childrey and Vashon *v.* Greenhow, *supra.*

The legislature undertook to make the coupons receivable for all taxes, &c. But the supreme court, in Vashon *v.* Greenhow, says the legislature had no power to do this. Why not? Simply because it was directly opposed to the aforesaid provisions of the State constitution with respect to the maintenance and support of the public free schools, and was, therefore, illegal and void.

It cannot be pretended for a moment that the sacredness
39 of the school fund depended upon the legislative act of setting it apart, as required by the State constitution. The

supreme court did not so decide; but, going back to the inception of the coupon contract—the illegal act of the legislature—declared that the legislature was without power and authority to do the act in question.

It should be remembered that it was the first legislature of Virginia, after her restoration to statehood, that passed the funding act of 1871. It was the bounden duty of that body to set apart and protect the school fund which had been solemnly dedicated by the Constitution for the benefit of all the people of the Commonwealth; but instead of performing the duty thus imposed, that body neglected to do so, and undertook to pledge that fund, with all other taxes, to the payment of coupons. No act more flagrantly illegal was ever perpetrated by any legislative body.

The result points to the motive. It is as well understood as any historical fact of the times, though not as readily susceptible of complete proof, that the funding act of 1871 was a huge fraud palmed upon the State in her poverty and distress. We are fully sensible of the fact that these things ordinarily should find no place in judicial opinions; but as part of the history of this long vexed subject, they may serve somewhat the purposes of vindicating the old Commonwealth from the many aspersions attempted to be cast upon her good name. The people of Virginia have only sought protection from what they feel to be a great fraud and oppression. Had the State done less she would have rendered herself unworthy of her past history.

In concluding his opinion in Vashon *v.* Greenhow Mr. Justice Bradley remarked: "It is certainly to be wished that some arrangement may be adopted which will be satisfactory to all the parties concerned and relieve the courts as well as the Commonwealth of Virginia, whose name and history recall so many interesting associations, from all further exhibitions of a controversy that has become a vexation and a regret."

40 This remark is worthy alike of the man and the judge. The generous wish has been accomplished, except as to the little squad of coupon-holders who continue to vex the Commonwealth; and whatever may be said to the contrary, the recent settlement of the State debt is due exclusively to the influence of the decisions of the Supreme Court in Huckless *v.* Childrey and in Vashon *v.* Greenhow, *supra*. In view of those decisions, and being entirely satisfied that the coupon feature of the act of 1871, which is distinct and separable from the main feature of the act, is tainted with the vice of illegality, which renders the whole coupon contract illegal and void, we take, in view of said Supreme Court decisions, the one additional and necessary step, and declare the whole coupon contract absolutely illegal and void. This leaves the bond and coupon holders to accept the terms of the recent settlement or to pursue the ordinary remedies for the collection of their principal and interest, and by either mode they will get more than they are in good conscience entitled to. For these reasons we reverse and annul the judgments, respectively, in each of the above-named cases.

Judgments reversed.

A true transcript of the record.
Test:

GEO. K. TAYLOR, *C. C.*

June 11, 1894.

Let the writ of error issue as prayed, on plaintiff in error giving bond in the penal sum of two hundred dollars, conditioned according to law, & approved by the undersigned.

MELVILLE W. FULLER,
Chief Justice of the United States, Allotted to Fourth Circuit.

41 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true transcript of the record in the cause lately pending in said court, in which The Commonwealth of Virginia was plaintiff in error and A. A. McCullough was defendant in error.

Seal Supreme Court of Appeals of Virginia, Richmond.

In testimony whereof I hereto set my hand and annex the seal of said court this 23d day of June, 1894.

GEO. K. TAYLOR, *Clerk.*

VIRGINIA, *City of Richmond,* } *To wit:*

I, Lunsford L. Lewis, president of the supreme court of appeals of Virginia, do certify that George K. Taylor, who hath given the preceding certificate, is clerk of the said court, at its place of session, at Richmond, and that his said attestation is in due form.

Given under my hand this 23d day of June, 1894.

L. L. LEWIS,
President Supreme Court of Appeals of Va.

42 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Commonwealth of Virginia, plaintiff in error, and A. A. McCullough, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the

ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction
43 of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
MELVILLE W. FULLER,
Chief Justice of the United States.

43½ In the clerk's office of the supreme court of appeals of Virginia, in the city of Richmond, June 23rd, 1894.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within writ of error is on file in my office.

Given under my hand.

GEO. K. TAYLOR,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

44 UNITED STATES OF AMERICA, *ss:*

To The Commonwealth of Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein A. A. McCullough is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error

mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

MELVILLE W. FULLER,
Chief Justice of the United States.

45 Legal service of this writ is hereby accepted for the Comm'th of Virginia.

R. TAYLOR SCOTT,
Att'y Gen'l of Virginia.

June 15th, 1894.

In the clerk's office of the supreme court of appeals of Virginia, in the city of Richmond, June 23rd, 1894.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within citation is on file in my office.

Given under my hand.

GEO. K. TAYLOR,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

46 Know all men by these presents that we, A. A. McCullough, as principal, and Matthew F. Maury and Richard W. Maury, as sureties, are held and firmly bound unto The Commonwealth of Virginia in the full and just sum of two hundred dollars, to be paid to the said The Commonwealth of Virginia, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a supreme court of appeals of the State of Virginia, in a suit depending in said court between The Commonwealth of Virginia, plaintiff in error, and A. A. McCullough, defendant in error, a judgment was rendered against the said defendant in error, and the said defendant in error having obtained a writ or error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to
47 the said The Commonwealth of Virginia, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said A. A. McCullough shall prosecute said writ to effect and answer all

damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

MATTHEW F. MAURY. [SEAL.]
RICH'D W. MAURY. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of—

P. H. BASKERVILL.
J. L. MAURY.

Approved by—

MELVILLE W. FULLER,
Chief Justice of the United States.

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the sureties on the within bond are good and sufficient for the purposes therein mentioned.

48 In testimony whereof I hereto set my hand and affix the seal of the said circuit court of appeals this 12th day of June, 1894.
[SEAL.]

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, Fourth Circuit.

In the clerk's office of the supreme court of appeals of Virginia, in Richmond, the 23d day of June, 1894.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true copy of the bond, the original of which is on file in my office.

Given under my hand.

GEO. K. TAYLOR,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

Endorsed on cover: Case No. 15,617. Virginia supreme court of appeals. Term No., 733. A. A. McCullough, plaintiff in error, *vs.* The Commonwealth of Virginia. Filed July 2, 1894.